

ZONING CHANGE REVIEW SHEET

CASE: C14-2012-0108 – Ross Road Center

Z.A.P. DATE: October 16, 2012

November 6, 2012

November 20, 2012

ADDRESS: 5501 ½ Ross Road

OWNER: Equinox Power Systems, Inc.
(Daniel Wang; Farid Agahi)

AGENT: Land Answers, Inc.
(Jim Wittliff)

ZONING FROM: I-SF-2

TO: GR-MU-CO for Tract 1 (5.738 acres)
LR-MU-CO for Tract 2 (11.023 acres)

TOTAL AREA: 16.761 acres

SUMMARY STAFF RECOMMENDATION:

The Staff recommendation is to grant neighborhood commercial – mixed use – conditional overlay (LR-MU-CO) combining district zoning. The Conditional Overlay limits development to 2,000 vehicle trips per day and prohibits residential treatment.

If the requested zoning is granted for this site, then 57 feet of right-of-way from the existing centerline should be dedicated for Ross Road according to the Transportation Plan [LDC, Sec. 25-6-51 and 25-6-55].

ZONING & PLATTING COMMISSION RECOMMENDATION:

October 16, 2012: *APPROVED A POSTPONEMENT REQUEST BY THE APPLICANT
TO NOVEMBER 6, 2012*

[P. SEEGER; C. BANKS – 2ND] (6-0) G. ROJAS – NOT YET ARRIVED

November 6, 2012: *CONTINUED TO NOVEMBER 20, 2012 AND THE PUBLIC HEARING
REMAINS OPEN; APPLICANT TO PROVIDE LIST OF PROPOSED PROHIBITED USES,
TO BE INCLUDED IN THE STAFF SUPPORT MATERIAL*

[J. MEEKER; P. SEEGER – 2ND] (6-0) G. ROJAS – ABSENT

November 20, 2012: *APPROVED THE APPLICANT'S REQUEST FOR GR-MU-CO
(TRACT 1) & LR-MU-CO (TRACT 2), WITH THE CO FOR 2,000 TRIPS, PROHIBIT
DRIVE-THRU FACILITIES AS AN ACCESSORY TO A RESTAURANT (GENERAL) OR
RESTAURANT (LIMITED) USE, AUTOMOTIVE REPAIR SERVICES, AUTOMOTIVE
SALES, BAIL BOND SERVICES, COMMERCIAL OFF-STREET PARKING, PAWN SHOP
SERVICES, RESIDENTIAL TREATMENT, AND SERVICE STATION, AND ADD'L
CONDITIONS OF R-O-W DEDICATION ON ROSS ROAD.*

[G. ROJAS; S. COMPTON – 2ND] (7-0)

NOTE: SPIERS WAY MUST BE EXTENDED THROUGH THE PROPERTY.

ISSUES:

A private restrictive covenant between the property owner and the adjacent owner of the service station/retail use to the south limits the use of the property to residential, office and certain commercial uses. Please refer to correspondence and attachment at the back of the Staff support material.

The Applicant would like to discuss the Staff recommendation and pursue GR-MU-CO zoning for Tract 1. Correspondence from the Applicant is at the back of the Staff packet.

DEPARTMENT COMMENTS:

The subject tract is undeveloped and zoned interim – single family residence (I-SF-2) district. The tract is situated just north of the intersection of Pearce Lane and Ross Road, both of which are classified as minor arterial roadways. The property is surrounded by a vacant manufactured home park and Del Valle schools to the west (MH-CO; I-RR), single family residences within the Berdoll Farms subdivisions to the north and east (I-SF-2; I-SF-4A), and a food sales and service station to the south (LR-CO). Please refer to Exhibits A (Zoning Map) and A-1 (Aerial View).

The Applicant proposes to create two zoning tracts: community commercial – mixed use (GR-MU) district zoning for the southern 5.7 acres and neighborhood commercial – mixed use (LR-MU) for the remaining 11 acres. Both tracts are envisioned for commercial uses, including automobile washing, retail, restaurant, bank, medical offices, a child care facility and the MU component would also allow for the full range of residential uses to occur, including apartments.

In recognition of the precedent set by the LR-CO zoning established for the adjacent four acre lot at the intersection of Pearce Lane and Ross Road, the Staff recommends LR-MU-CO for Tracts 1 and 2, subject to the recommendations of Transportation staff for right-of-way dedication on Ross Road and vehicle trip limitation. The Staff recommendation recognizes that the property is situated in close proximity to the intersection of two minor arterial roadways, and the absence of commercial businesses to serve the surrounding and nearby residential subdivisions. The nearest commercial businesses are located along State Highway 71, approximately 1¼ miles to the north.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	I-SF-2	Undeveloped
<i>North</i>	I-SF-2; I-SF-4A; I-RR	Single family residences within Berdoll Farms subdivision; Amenity center; Pond
<i>South</i>	LR-CO	Service station; Food sales
<i>East</i>	I-SF-2	Single family residences within the Meadows at Berdoll subdivision
<i>West</i>	MH-CO; I-RR	Vacant manufactured home park; Del Valle ISD Middle

		and Elementary Schools
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AREA STUDY: N / A**TIA:** Waived—please refer to Transportation comments**WATERSHED:** Dry Creek East**DESIRED DEVELOPMENT ZONE:** Yes**CAPITOL VIEW CORRIDOR:** No**SCENIC ROADWAY:** No**NEIGHBORHOOD ORGANIZATIONS:**

627 – Onion Creek Homeowners Association 774 – Del Valle Independent School District
 786 – Home Builders Association of Greater Austin
 1005 – Elroy Neighborhood Association 1037 – Homeless Neighborhood Association
 1075 – League of Bicycling Voters 1083 – Berdoll Farms/Meadows
 1101 – Los Cielos Homeowners Association 1138 – Far Southeast Improvement Association
 1224 – Austin Monorail Project 1228 – Sierra Club, Austin Regional Group
 1252 – Lexington Parke Neighborhood Association
 1258 – Del Valle Community Coalition 1340 – Austin Heritage Tree Foundation
 1363 – SEL Texas

SCHOOLS:

Del Valle ISD – Elementary School; Middle School; and High School

CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-2007-0271 – Deerwood Manufactured Home Park – 12400 Pearce Lane	I-RR to MH	To Grant MH-CO with conditions of r-o-w dedication on Pearce Ln. and Ross Rd.	Approved MH-CO with RC for r-o-w dedication as ZAP recommended (4-24-2008).
C14-05-0141 – The Park at Del Valle – NE Corner of Ross Rd. at Pearce Ln.	I-SF-2 to GR	To Grant LR-CO with CO limiting trips to 3,200 vpd, prohibit residential treatment, with conditions of add'l r-o-w on Ross Rd. and Pearce Ln.	Approved LR-CO with RC for r-o-w on Ross Rd and Pearce Ln., as ZAP recommended (12-1-2005).
C14-03-0135.SH (Lexington Parke – SMART Housing) – North of Pearce Ln. and west of Ross Rd.	DR; I-SF-4A to SF-4A	To Grant SF-4A with conditions of the Traffic Impact Analysis.	Approved SF-4A with a Restrictive Covenant for the TIA as recommended by ZAP (12-11-2003).

RELATED CASES:

The property was annexed into the City limits on December 31, 2003 (C7a-03-022). The zoning area as well as the adjacent four acres of commercial zoned property to the south was proposed for GR and SF-4A district zoning in February 2005 (C14-05-0028.SH). The prospective buyer and agent withdrew his participation from the case due to significant transportation and drainage issues on the site, and the case expired in November 2005.

There are no related subdivision or site plan cases on the subject property.

ABUTTING STREETS:

Name	ROW	Pavement	Classification	Sidewalks	Bus Route	Bike Route
Ross Road	100 feet	Varies	Minor Arterial, 2 lanes (4,413 vpd)	Yes	Not available within ¼ mile	Not classified in the Bicycle Plan

CITY COUNCIL DATE: November 8, 2012

ACTION: Approved a Postponement request by Staff to December 13, 2012 (6-0, Mayor Pro Tem Cole – off the dais).

December 13, 2012

ORDINANCE READINGS: 1st

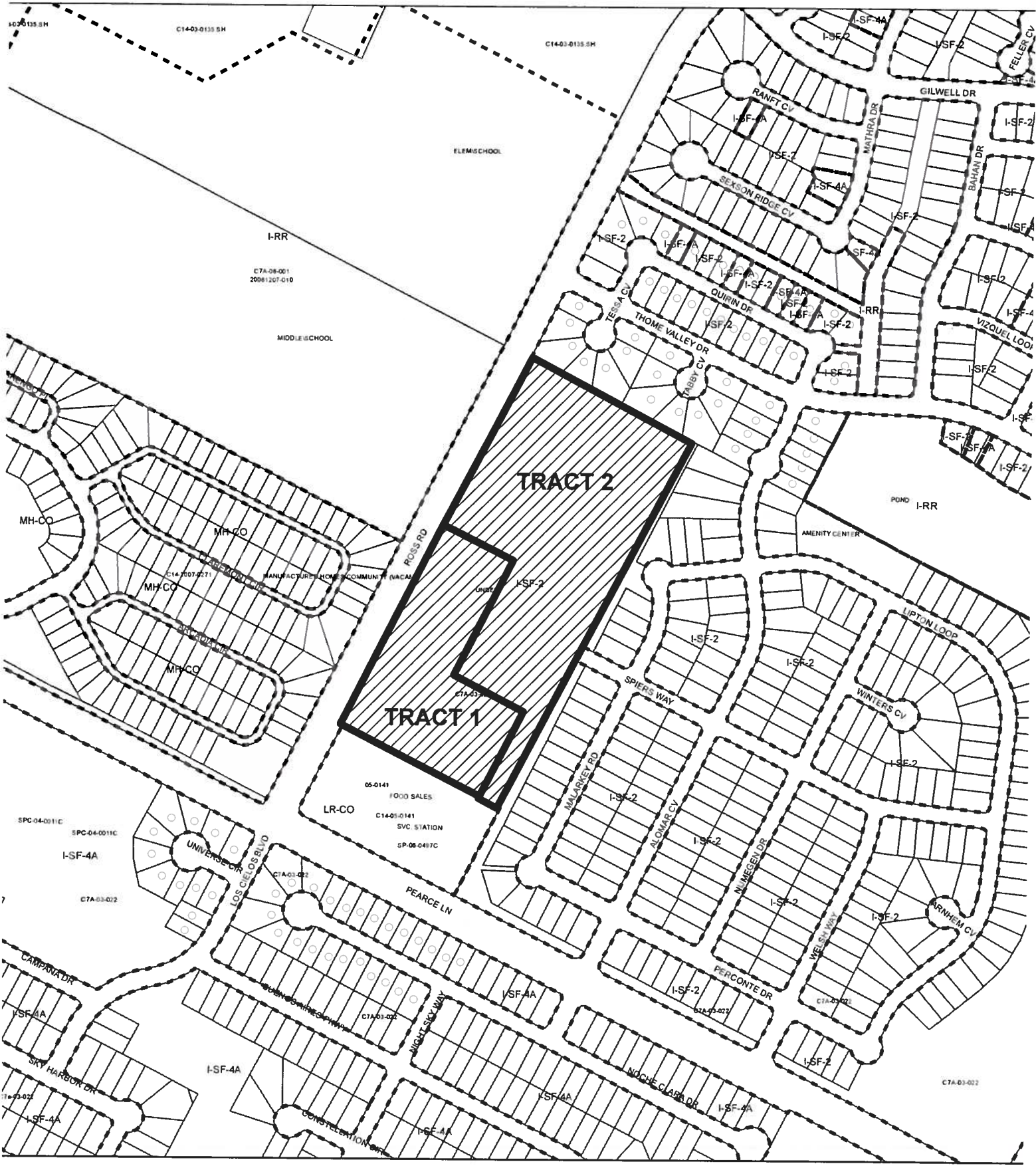
2nd





3rd

ORDINANCE NUMBER:

CASE MANAGER: Wendy Rhoades
e-mail: wendy.rhoades@austintexas.gov

PHONE: 974-7719



-  N
-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

ZONING EXHIBIT A

ZONING CASE#: C14-2012-0108



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

1" = 400'



SUMMARY STAFF RECOMMENDATION:

The Staff recommendation is to grant neighborhood commercial – mixed use – conditional overlay (LR-MU-CO) combining district zoning. The Conditional Overlay limits development to 2,000 vehicle trips per day and prohibits residential treatment.

If the requested zoning is granted for this site, then 57 feet of right-of-way from the existing centerline should be dedicated for Ross Road according to the Transportation Plan [LDC, Sec. 25-6-51 and 25-6-55].

BASIS FOR LAND USE RECOMMENDATION (ZONING PRINCIPLES)

1. *The proposed zoning should be consistent with the purpose statement of the district sought.*

Applicant's Request (Tract 1 – GR-MU-CO and Tract 2 – LR-MU-CO): The purpose statement per the City of Austin Land Development Code states: "The proposed community commercial (GR) district is intended for office and commercial uses serving neighborhood and community needs, including both unified shopping centers and individually developed commercial sites, and typically requiring locations accessible from major trafficways." The mixed use (MU) district is intended to allow for office, retail, commercial and residential uses to be combined in a single development. For Tract 2: The neighborhood commercial (LR) district is intended for shopping facilities that provide limited business services and offices to the residents of the neighborhood, such as consumer repair services, food sales, service stations, and pet services. The purpose statement listed in the City of Austin *Land Development Code* states: "The Neighborhood Commercial district is the designation for a commercial use that provides business service and office facilities for the residents of a neighborhood. Site development regulations and performance standards applicable to a LR district use are designed to ensure that the use is compatible and complementary in scale and appearance with the residential environment."

The Staff recommendation for both Tracts 1 and 2 is LR-MU-CO.

2. *Zoning changes should promote an orderly and compatible relationship among land uses.*

In recognition of the precedent set by the LR-CO zoning established for the adjacent four acre lot at the intersection of Pearce Lane and Ross Road, the Staff recommends LR-MU-CO for Tracts 1 and 2, subject to the recommendations of Transportation staff for right-of-way dedication on Ross Road and vehicle trip limitation. The Staff recommendation recognizes that the property is situated in close proximity to the intersection of two minor arterial roadways, and the absence of commercial businesses to serve the surrounding and nearby residential subdivisions. The nearest commercial businesses are located along State Highway 71, approximately 1¼ miles to the north.

EXISTING CONDITIONS

Site Characteristics

The property is undeveloped and relatively flat. There appear to be no significant topographical constraints on the site.

Impervious Cover

The maximum impervious cover allowed by the GR-MU and the LR-MU zoning districts would be 80%, which is a consistent figure between the zoning and watershed regulations.

Environmental

The site is not located over the Edwards Aquifer Recharge Zone. The site is in the Desired Development Zone. The site is in the Dry Creek East Watershed of the Colorado River Basin, which is classified as a Suburban Watershed by Chapter 25-8 of the City's Land Development Code. Under current watershed regulations, development or redevelopment on this site will be subject to the following impervious cover limits:

<i>Development Classification</i>	<i>% of Net Site Area</i>	<i>% with Transfers</i>
Single-Family (minimum lot size 5750 sq. ft.)	50%	60%
Other Single-Family or Duplex	55%	60%
Multifamily	60%	70%
Commercial	80%	90%

According to flood plain maps there is no flood plain within or adjacent to the project boundary.

Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.

Trees will likely be impacted with a proposed development associated with this rezoning case. Please be aware that an approved rezoning status does not eliminate a proposed development's requirements to meet the intent of the tree ordinances. If further explanation or specificity is needed, please contact the City Arborist at 974-1876. At this time, site specific information is unavailable regarding other vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.

Under current watershed regulations, development or redevelopment on this site will be subject to the following water quality control requirements:

- Structural controls: Sedimentation and filtration basins with increased capture volume and 2 year detention.

At this time, no information has been provided as to whether this property has any pre-existing approvals that preempt current water quality or Code requirements.

Transportation

The Austin Metropolitan Area Transportation Plan calls for 114 feet of right-of-way for Ross Road. If the requested zoning is granted for this site, then 57 feet of right-of-way from the existing centerline should be dedicated for Ross Road according to the Transportation Plan [LDC, Sec. 25-6-51 and 25-6-55].

A Traffic Impact Analysis (TIA) was not required for this case because the applicant agreed to limit the intensity and uses for this development to generate less than 2000 trips per day. In order to exceed this limit in the future, the applicant will be required to file a new zoning case and submit a TIA. Because of the size of this tract, it is likely that any significant commercial development on the site will generate more than 2000 trips. It is strongly recommended that the applicant submit a TIA before proceeding with this zoning case so that the traffic impacts can be fully assessed in advance. However, if the zoning is granted, development should be limited through a conditional overlay to less than 2,000 vehicle trips per day. [LDC, 25-6-117].

Water and Wastewater

The landowner intends to serve the site with City of Austin water and wastewater utilities. The landowner, at own expense, will be responsible for providing any water and wastewater utility improvements, offsite main extensions, utility relocations and or abandonments required by the proposed land use. Depending on the development plans submitted, water and or wastewater service extension requests may be required. Water and wastewater utility plans must be reviewed and approved by the Austin Water Utility for compliance with City criteria. All water and wastewater construction must be inspected by the City of Austin. The landowner must pay the City inspection fee with the utility construction. The landowner must pay the tap and impact fee once the landowner makes an application for a City of Austin water and wastewater utility tap permit.

Site Plan and Compatibility Standards

Any new development is subject to Subchapter E. Design Standards and Mixed Use.

The site is subject to compatibility standards. Along the north, east & west property lines, the following standards apply:

- No structure may be built within 25 feet of the property line.
- No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
- No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
- No parking or driveways are allowed within 25 feet of the property line.

- A fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.

Additional design regulations will be enforced at the time a site plan is submitted.

Site plan review and approval cannot be finalized until the lot(s) is/are legal by recorded plat or grandfathered by Land Status Determination (Section 25-1-61).

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

Case Number: C14-2012-0108

Contact: Wendy Rhoades, 512-974-7719

Public Hearing: October 16, 2012, Zoning and Platting Commission
November 8, 2012, City Council

Jose Rodriguez Jr.

Your Name (please print)

MALARKY RD

5609 MALARKY RD, TX 78617

Your address(es) affected by this application

<input type="checkbox"/> I am in favor
<input checked="" type="checkbox"/> I object

Jose Rodriguez Jr.

Signature

10-29-12

Date

Daytime Telephone: 512 247 6577

Comments: To Whom I am in FAVOR of this
Zoning change if the high lighted ROAD ^{Spier's Way}
REMAINS closed to thru traffic. if not
I object to the change
see Attachment

you use this form to comment, it may be returned to:

City of Austin

Planning & Development Review Department

Wendy Rhoades

P.O. Box 1088

Austin, TX 78767-8810

INFORMACIÓN DE AUDIENCIA PÚBLICA

Esta petición de zonificación / rezonificación será repasada y acción será tomada de acuerdo a dos audiencias públicas: ante la Comisión de Usos Urbanos y el cabildo municipal. Aunque solicitantes y/o su(s) agente(s) se les requiere atender la audiencia pública, usted no esta bajo requisito de atender. De todos modos, si usted atiende la audiencia pública, tendrá la oportunidad de hablar a FAVOR o EN CONTRA al propuesto desarrollo urbano o cambio de zonificación. Usted también puede contactar a una organización de protección al medio ambiente u organización de vecinos que haya expresado interés en la aplicación teniendo implicaciones a su propiedad.

Durante la audiencia pública, la comisión podría postergar o continuar audiencia del caso en una fecha futura, o puede evaluar la recomendación de los oficiales municipales y las del público al mismo tiempo mandando su recomendación al cabildo municipal. Si la comisión anuncia una fecha y hora específica para postergar o continuar discusión, y no se extiende más de 60 días, no tendrá obligación de otra notificación pública.

El cabildo municipal, durante su audiencia pública, puede otorgar o negar una petición de zonificación, rézonificar el terreno a una clasificación de zonificación menos intensiva que lo que es pedida. En ningún caso se otorgara una clasificación de zonificación más intensiva de la petición.

Para otorgar un desarrollo de usos urbanos mixtos, el cabildo municipal puede agregar la designación USO MIXTO (MU) DISTRITO COMBINADO, *Mixed-use (MU) Combining District*, a ciertos usos urbanos de comercio. La designación MU- Distrito Combinado simplemente permite usos urbanos residenciales en adición a los usos ya permitidos el los siete distritos con zonificación para comercio. Como resultado, la designación MU- Distrito Combinado, otorga la combinación de oficinas, comercio, y usos urbanos residenciales en el mismo sitio.

Para más información acerca del proceso de desarrollo urbano de la ciudad de Austin, por favor visite nuestra página de la *Internet*:
www.austintexas.gov

Comentarios escritos deberán ser sometidos a la comisión (o a la persona designada en la noticia oficial) antes o durante la audiencia pública. Sus comentarios deben incluir el nombre de la comisión, la fecha de la audiencia pública, y el número de caso de la persona designada en la noticia oficial.

Numero de caso: C14-2012-0108

Persona designada: Wendy Rhoades, 512-974-7719

**Audiencia Publica: Oct 16, 2012, Zoning and Platting Commission
Nov 8, 2012, City Council**

Laura De Hart
Su nombre (en letra de molde)

☐ I am in favor
☒ I object

5705 Malenkey Rd.
Su domicilio(s) afectado(s) por esta solicitud

[Signature]
Firma

10/07/2012
Fecha

Daytime Telephone: *(512) 330-0071*

Comments:

Si usted usa esta forma para proveer comentarios, puede retornarlos :

City of Austin
Planning & Development Review Department
Wendy Rhoades
P. O. Box 1088
Austin, TX 78767-8810

Rhoades, Wendy

From: Mike Nyren <mikenyren@msn.com>
Sent: Tuesday, October 16, 2012 5:10 PM
To: Rhoades, Wendy
Subject: Case #C14-201210108

Wendy,

As discussed, as a property owner of an adjacent property I am opposed to the proposed changes to the zoning of the parcel in question. My main opposition stems from the damage to the community and property values from adverse development such as liquor stores, pawn shops and the like on an already struggling community where many of us are under water on our loans due to property values moving in a negative direction.

On the other hand, I heartily support more singly-family homes, restaurants and grocery stores as long as they are in keeping with the overall spirit and scope of the community and the nearby schools.

Thank you so much for listening to my input!!

Michael Nyren
12904 Lipton Loop
DelValle, Texas 78617

Rhoades, Wendy

From: Jim Wittliff <[REDACTED]@chaglab.com>
Sent: Wednesday, November 14, 2012 5:16 PM
To: Rhoades, Wendy
Subject: C14-2012-0108 - Ross Road Center

Wendy,

The following land uses will be prohibited for the 5.738 acre portion of the Ross Road Center property which we are proposing to rezone to GR-MU-CO:

- Drive-through facilities are prohibited as an accessory use for a restaurant (general) or a restaurant (limited) use
- No restaurants (limited)
- No service stations
- No food sales (i.e., no convenience stores)
- No general retail sales (convenience)
- No bail bond services
- No pawn shops
- No auto sales

In addition, we will limit vehicle trips to 2,000 per day for the entire 16.78 acre site, and will dedicate additional right-of-way along the 1,292.48 linear feet of frontage along Ross Road, to provide 57 feet of right-of-way from the centerline, as called for by CAMPO. Due to the private Restrictive Covenant that was added to this property by the sellers who own the 4 acre remainder of this property at the intersection of Ross Road and Pearce Lane, the Ross Road Center 16.78 acre tract is prohibited from many land uses that could be beneficial to the surrounding residential neighbors and to the Del Valle ISD school facilities, such as grocery stores, bakeries, drug stores, retail clothing stores, office supply stores, pet stores, pet grooming salons, art & craft studios, delicatessens, fabric stores, paint stores, hair salons, and software development. Because of the limited number of remaining land uses that are not prohibited, we are requesting that the third of the property that is located the farthest distance from the adjacent residential lots, away from the Del Valle ISD properties, and the closest to the Ross Road/Pearce Lane intersection be zoned GR-MU-CO, to allow beneficial neighborhood services such as Automotive Rentals, a self-service Car Wash, a sports-themed General Restaurant with outdoor seating, and Automotive Repair services.

We have discussed these proposed land uses with the President of the Elroy Neighborhood Association and with the Facilities Manager for Del Valle ISD, as well as with two adjacent neighbors who have called us, and we are not aware of any opposition to any of the proposed land uses. I also received a call from Michael Nyren, the neighbor who previously sent you an email in opposition to the rezoning on October 16th, and he also is now comfortable with the proposed rezoning and intended land uses.

Thank you,

Jim Wittliff
Land Answers, Inc.

**USE RESTRICTIONS (TO BE APPLICABLE IN PERPETUITY
TO THE SUBJECT PROPERTY AND EACH PORTION THEREOF)**

The subject property may be used only for the following purposes and shall not be used for any other purpose without the prior, written consent of the owners of all of the Benefitted Property identified on Exhibit "D":

1. residential, including both single-family and multi-family;
2. traditional, "sit-down" restaurants, including those selling beer, wine, and other alcoholic beverages solely for on premises consumption, but without drive-through facilities;
3. offices, including medical and dental offices;
4. urgent care centers;
5. daycare centers;
6. congregate care centers;
7. veterinary clinics;
8. laundromats;
9. self-storage facilities;
10. car wash;
11. automotive service centers;
12. gyms/fitness centers;
13. banks and credit unions (but not check-cashing services);
14. warehouse/industrial;
15. flex office/warehouse (without retail activity).

EXHIBIT "C"

*PRIVATE
RESTRICTIVE COVENANT*

16. healthcare facility including hospital;
17. care centers (e.g. assisted living, skilled nursing homes);
18. commercial off-street parking;
19. hotel, motel and extended stay;
20. consumer, equipment and appliance repair & services;
21. indoor and outdoor entertainment (e.g. theatres, ice skating);
22. outdoor sports and recreation (e.g. driving ranges, miniature golf, swimming pools);
23. educational facilities (e.g. public and private schools, tutoring);
24. personal improvement services (e.g. driving schools, dance studios, hobby instruction, photo studio);
25. post office and mailing/shipping stores;
26. church or religious facilities;
27. copy, printing and publishing;
28. automotive rental;
29. automotive dealership;
30. automobile, truck, boat, RV, and industrial equipment rental and storage facilities;
and
31. cultural services (e.g. library, museum).

Without in any manner limiting or qualifying the provision that only the uses enumerated above are permitted, it is specifically understood and provided that no retail activity of any nature is permitted. The term "retail activity" as used herein means the sale of tangible personal property at retail (retail meaning sale to end users). Proscribed uses include, but are by no means limited to, fast-food restaurants, sale of foodstuffs (other than at "sit-down" restaurants), sale of groceries and

other consumer items, sale of beer, wine, or tobacco for off-premises consumption, and sale of gasoline and other petroleum products.

For a period beginning with the date of this Deed and continuing until the earlier of (i) the expiration of ten (10) years, or (ii) such time as GAB Partners, Inc., ceases to own any part of the Benefitted Property, the owner of the subject property (meaning the property conveyed hereby) shall notify GAB Partners in writing, in advance, of the nature of each use intended to be made of the subject property. The purpose of this notice requirement is to enable early discussion of any concerns in regard to whether an intended use is a permitted use. If GAB Partners, Inc., becomes aware, whether from construction activity or otherwise, a new or additional use is to be made of the subject property and GAB Partners, Inc., has not been notified in regard to the intended use, GAB Partners shall remind Equinox Powers Systems, Inc., of the notice requirement set forth herein and Equinox Power Systems, Inc., shall promptly comply with, or cause compliance with, the same. The entitlement to notification of intended use is personal to GAB Partners, Inc., and Equinox Power Systems, Inc., is not required to provide such notice to other owners of the Benefitted Property.

Written communications to GAB Partners, Inc., pursuant to the foregoing paragraph, shall be forwarded to GAB Partners, Inc., in care of Akin & Akin, L.L.P., P.O. Box 271, Elgin, Texas 78621, and written communications to Equinox Power Systems, Inc., pursuant to the foregoing paragraph shall be forwarded to Equinox Power Systems, Inc., at 10511 Floral Park Drive, Austin, Texas 78759. Either party may change its address for notice by providing written notice of such change to the other party and by recording notice of the change of address in the Real Property Records of Travis County, Texas.

**BENEFITTED PROPERTY (OWNERS OF ANY PORTION OF WHICH
ARE ENTITLED TO ENFORCE THE USE RESTRICTIONS ON EXHIBIT "C")**

4.179 acres, more or less, out of the Jose Antonio Navarro Seven League Grant, Abstract No. 18, in Travis County, Texas, being that certain tract of 20.94 acres conveyed to GAB Partners, Inc., by deed recorded under Document No. 2005225713 in the Official Public Records of Travis County, Texas, LESS AND SAVE AND EXCEPT the tract of 16.761 acres described on Exhibit "A" to this deed.

EXHIBIT "D"



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana Debeauvoir

DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

August 07 2012 05:13 PM

FEE: \$ 52.00 2012130205